IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 307/2001

Bharat Sanchar Nigam Ltd.,
represented by its General Manager,
through its duly authorised Officer
Mr. S.A. Krishna, SDE (Legal),
with its Office at 18th June Road,
Opp. Salcete Farmacia,
Panjim, Goa. ..... Petitioner.

V/s.

1. The Sarpanch,
   Village Panchayat Penha de Franca,
   Brittona, Bardez, Goa.

2. The Secretary,
   Village Panchayat Penha de Franca,
   Brittona, Bardez, Goa.

3. The Secretary for Panchayats,
   Govt. of Goa,
   Secretariat, Panaji, Goa. ..... Respondents.

Mr. Joseph Vaz, Central Govt. Standing Counsel for the petitioner.

Mr N.N. Sardessai, Advocate for respondent No.1.

Mr. S. Vahidulla, Addl. Govt. Advocate for respondents No.2 and 3.

CORAM : SMT. RANJANA P. DESAI &
N.A. BRITTO, JJ.

DATE : JUNE 14, 2006.

ORAL JUDGMENT : (Per SMT. RANJANA P. DESAI, J.)

In this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner, Bharat Sanchar Nigam Ltd., has, inter alia, prayed that respondents No.1 and 2 be directed to issue NOC for construction of project and letter dated 25th May, 2001 directing the petitioner to pay Rs.2,50,050/- as penalty and Rs.1,00,000/- as health fees be quashed.

2. The petitioner is a Corporation. It is a Government of India Undertaking. Respondents No.1 and 2 are the local authorities and respondent No.3 is the over all incharge of the Panchayats in the State of Goa.

3. It is the case of the petitioner that in order to improve the telephone facilities and provide facilities in the fast developing area of Porvorim, the Government acquired a plot for staff quarters and for setting up of telephone exchange. According to the petitioner, inspite of the matter being urgent, respondents No.1 and 2 refused to process the file and submit the same to the Chief Town Planner. In view of this conduct of respondents No.1 and 2, the petitioner filed an appeal under the Panchayat Raj Act, 1993 for directions to the respondents to forward the construction file to the Senior Town Planner, Mapusa. The Deputy Director of Panchayats vide Order dated 17th September,

1999 directed respondents No.1 and 2 to forward the file within one week's time to the Senior Town Planner. Respondents No.1 and 2 preferred an appeal before the Director of Panchayats, which was dismissed by the Director of Panchayats on 6th June, 2000. According to the petitioner, inspite of the directions to forward the file to the Senior Town Planner, respondents No.1 and 2 continued sending notices, making unfounded and false allegations in order to cause delay. Respondents No.1 and 2 again issued show cause notice dated 26th August, 2000. The petitioner sent a reply to it. According to the petitioner, the Senior Town Planner approved the project vide NOC dated 19th September, 2000. Respondents No.1 and 2 demanded additional documents which were given by the petitioner on 24th October, 2000 only to avoid the delay. Respondents No.1 and 2 thereafter on 17th November, 2000 asked the petitioner to submit ownership documents indicating that the property stood in the name of the petitioner inspite of knowing that the land was acquired by the Government for the petitioner. According to the petitioner, the petitioner addressed various letters and brought to the attention of the respondents the losses that were being caused to the petitioner. Prior to that the petitioner had also given additional documents to respondent No.2. Inspite of all this, on 18th December, 2000, the petitioner again received a letter from respondent No.1 demanding deed of partition indicating that the land was allotted to the petitioner. Respondent No.1 then passed a resolution on 15th March, 2001

refusing to approve the plans and issue NOC for the construction. The petitioner then approached the Director of Panchayats against the said resolution. The Director of Panchayats set aside the said notice and directed the respondents to issue construction licence within 15 days. Respondent No.1 then vide its letter dated 25th May, 2001 directed the petitioner to pay construction fee of Rs.2,50,100/-, penalty of Rs.2,50,050/- and sanitation and health fee of Rs.1,00,000/-. Being aggrieved by this conduct of the respondents, the petitioner has preferred this petition for the aforestated reliefs.

4. On 5th November, 2001, this Court directed respondent No.1 to hand over NOC to the petitioner to proceed further with the work of construction, keeping open the dispute involved in the petition. This Court observed that the liability to pay the penalty and sanitation fees which is the subject-matter would be as per the final decision in this petition. On that day Rule was issued.

5. We have heard the learned Counsel for the parties at some length. The learned Counsel for the petitioner states that after the Court's order dated 5th November, 2001, in about a week's time the NOC has been granted to the petitioner.

6. Admittedly, the construction fees have been paid by the petitioner. The learned Counsel for the petitioner states that in terms

of law, the petitioner has no objection to pay the sanitation and health fees as and when they are due. The question really is whether the petitioners are liable to pay the penalty of Rs.2,50,050/- . The learned Counsel for the petitioner contended that the petitioner is not liable to pay this penalty. He stated that in the notice dated 25.5.2001, respondent No.1 has not indicated as to why this penalty has been levied on the petitioner. He submitted that from the conduct of the respondents it is absolutely clear that the respondents wanted to unnecessarily delay the petitioner's project. The learned Counsel contended that the respondents' conduct needs to be severely commented upon. He submitted that it is because of the objectionable conduct of respondent No.1 that Rule was issued by this Court. He submitted that in the circumstances, the letter calling upon the petitioner to pay the penalty be quashed.

7. The learned Counsel for respondent No.1, on other hand, submitted that the petitioner has stated in the present petition that they did construct a temporary structure on the land in question for storing cement. This, according to the learned Counsel for the respondent, indicates that the petitioner did construct an unauthorised structure and hence, levying of the penalty is justified.

8. Why penalty is levied on the petitioner is not clear. Notice dated 25.5.2001 does not state the reasons for levying penalty.

Having perused the averments made in the petition, we are of the prima facie opinion that the respondents have, by their conduct, delayed the petitioner's project. To us, prima facie, this appears to be a case of red tapism on account of which the project of the petitioner is unnecessarily delayed. The petitioner is a Government of India Undertaking involved in providing services in the field of communication to the members of public and various other Government organisations in the State of Goa. It is unfortunate that respondent No.1 should adopt such approach while dealing with the petitioner. Precisely, for this reason this Court had issued Rule. However, since NOC has already been handed over, we feel that the petition has now worked itself out so far as grant of NOC is concerned. So far as the question of penalty is concerned, it is necessary for the respondents to issue an appropriate notice to the petitioner giving reasons why the penalty is being levied and the petitioner should then file a reply to the said notice stating its case. The respondents should then take a decision whether penalty in fact should be levied on the petitioner or not. In the circumstances of the case, in our opinion, interest of justice would be served if we pass the following order :

The respondents shall issue notice to the petitioner, within a period of two months from today, calling upon the petitioner to pay penalty, stating why the respondents propose to levy penalty. The

petitioner shall file reply to the said notice within a period of four weeks from the receipt of the notice. Upon receiving the reply from the petitioner, the respondents shall pass appropriate order and communicate the same to the petitioner. We make it clear that we have not expressed any opinion as to whether there is justification for levying penalty or not and the respondents shall take their decision independently and in accordance with law. The petition is disposed of in the aforestated terms.

SMT. RANJANA P. DESAI, J.

N.A. BRITTO, J.

ssm.